IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1143 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

STATE OF GUJARAT

Versus

AMICHANDBHAI M ATHWAN

Appearance:

Shri S.T.Mehta, Additional Public Prosecutor, for the appellant - State.

Shri C.J.Vin, Advocate, for the respondent - accused.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 05/11/96

ORAL JUDGEMENT

The judgment and order of acquittal passed by the

learned Chief Judicial Magistrate at Palanpur on 19th July 1993 in Criminal Case No.3987 of 1986 is under challenge in this appeal by leave of this court under Section 378 (1) of the Code of Criminal Procedure, 1973 (the Cr.PC for brief). Thereby the learned trial Magistrate acquitted the respondent - accused of the offences punishable under Sections 408, 467, 468, 471 and 477-A of the Indian Penal Code, 1860 (the IPC for brief).

2. The facts giving rise to this appeal move in a narrow compass. The respondent - accused was the secretary of one cooperative society in the name and style of Banaskantha District Panchayat Workers Loan and Consumer Cooperative Society Ltd. (the Society for convenience) at the relevant time. It is the case of the prosecution that he credited only Rs.1000/- in the books of accounts on 16th August 1977 in the name of Ganeshbhai Becharbhai though the latter deposited Rs.5000/- on that day. It is further the case of the prosecution that he debited an amount of Rs.34000/- in the name of Natwarlal Nandlal Raval on 30th June 1982 towards repayment of the latter's fixed deposit though it was not actually paid. It is the prosecution case that the respondent - accused thus misappropriated Rs.38000/-. It is also the case of the prosecution that, by one Resolution passed in the meeting held on 26th September 1980, the respondent accused got sanctioned in his name the total loan of Rs.140000/- and got it from the Society though it had no surplus funds at that time and it obtained funds by obtaining deposits from its members or other people. The case of the prosecution thus is that the respondent accused in all misappropriated the funds of the Society to the tune of Rs.178000/-. It appears that the matter came to the notice of the Assistant District Registrar of Cooperative Societies. He got one Jethalal Khodidas Raval appointed as Government Auditor for auditing the accounts of the Society from 1st July 1977 to 30th June 1983. A copy of the order in that regard passed by the Assistant District Registrar on 1st June 1984 is at Exh.28 on the record of the case. The aforesaid irregularities were pointed out by the Government Auditor in his audit report. The audit report is at Exh.34 on the record of the case. Thereupon, the Assistant District Registrar by his order passed on 22nd November 1985 sanctioned prosecution against the respondent accused for the offences punishable under Sections 406, 467, 468, 471 and 477-A of the IPC. Its copy is at Exh.37 on the record of the case. Thereupon, the necessary complaint was filed in the City Police Station at Palanpur on 23rd November 1985. It is at Exh.38 on the record of the case. On conclusion of the

investigation, the necessary chargesheet was submitted in the Court of the Chief Judicial Magistrate of Banaskantha at Palanpur on 27th May 1986 charging the respondent - accused with the aforesaid offences. It came to be registered as Criminal Case No.3987 of 1986. The charge against the accused was framed on 16th February 1989. It is at Exh.9 on the record of the case. He did not plead guilty to the charges. He was thereupon tried. After recording the prosecution evidence and after recording the further statement of the respondent - accused under Section 313 of the Cr.PC and after hearing arguments, by his judgment and order passed on 19th July 1983 in Criminal Case No.3987 of 1986, the learned Chief Judicial Magistrate acquitted the respondent - accused of the offences with which he was charged. That aggrieved the prosecution agency. It has therefore invoked the appellate jurisdiction of this court under Section 378 (1) of the Cr.PC after obtaining its leave for questioning the correctness of the aforesaid judgment and order of acquittal passed by the learned trial Magistrate.

3. Learned Additional Public Prosecutor Shri Mehta for the appellant - State has taken me through the entire evidence on record in support of his submission that the learned trial Magistrate was in error in coming to the conclusion that the prosecution did not prove its case against the respondent - accused beyond any reasonable doubt. Learned Additional Public Prosecutor Shri Mehta has submitted that the material on record clearly points the finger of guilt against the respondent - accused and the prosecution can be said to have brought the guilt home to the respondent - accused beyond any reasonable doubt. As against this, learned Advocate Shri Vin for the respondent - accused has submitted that the learned trial Magistrate has carefully examined and appreciated the evidence on record and has come to the conclusion that the prosecution has not been able to prove its case at trial beyond any reasonable doubt. According to well settled principles of law, runs the submission of learned Advocate Shri Vin for the respondent - accused, the view taken by the learned trial Magistrate is a possible view and it calls for no interference by this court in this appeal against the judgment and order of acquittal.

4. The prosecution has examined Ganeshbhai Becharbhai as prosecution witness No.1 at Exh.19 in support of its case that this witness deposited Rs.5000/on 16th August 1977 but the credit of only Rs.1000/- was given by the respondent - accused in the books of accounts. It may be mentioned at this stage

that the learned trial Magistrate has rightly come to the conclusion that the prosecution has not been able to prove that the respondent - accused was responsible for maintenance of accounts. It is not the case of the prosecution that the respondent - accused was writing accounts. The learned trial Magistrate has carefully examined the evidence of prosecution witness No.1 at Exh.19 and has come to the conclusion that it was doubtful whether he deposited Rs.5000/- at the relevant time. He did not have the original receipt with him. Its carbon copy from the record of the Society was shown to him and it was taken on record as Exh.29 by the trial court in the case. The witness at Exh.19 had to admit that the said receipt was not in the hands of the respondent - accused. In that view of the matter, the learned trial Magistrate has rightly given the benefit of doubt regarding the deposit of Rs.5000/- by the witness at Exh.19 and preparation of the receipt at Exh.29 by the respondent - accused.

5. It may be mentioned at this stage that the receipt at Exh.29 is in the name of prosecution witness No.1 at Exh.29. It purports to have been issued on 16th August 1977. It is for Rs.5000/-. The daily account book of the Society for the year 1977-78 has been produced. On 16th August 1977 an entry has been made showing deposit of Rs.1000/- by prosecution witness No.1 at Exh.19 though the receipt at Exh.29 shows his deposit of Rs.5000/-. In order to satisfy myself about this transaction, I have looked at the original record. The receipt at Exh.29 is not in the handwritings of the author of the entry made in the daily account book on 16th August 1977 crediting Rs.1000/- as deposit received from prosecution witness No.1 at Exh.19. In order to ascertain whether or not the respondent - accused is the author of the entry in the daily account book or in the receipt at Exh.29, I also verified the minutes book and more particularly minutes of the meeting of the Society held on 26th September 1980 at Exh.31 on the record of the case. The signature of the respondent - accused is at serial No.1. That handwriting is different from the entry in the daily account book made on 16th August 1977 showing credit of Rs.1000/- as deposit in the name of prosecution witness at Exh.19. The author of that entry seems to be the author of the minutes of the meeting at Exh.31 on the record of the case.

6. Ordinarily, it would not be desirable on the part of the court to venture comparison of disputed handwritings of a person with his admitted handwritings. Ordinarily, the court would look at the expert's evidence

in that regard. In this case, no opinion of any handwriting expert was obtained by or on behalf of the prosecution for the purpose. I have therefore thought it fit to do so in view of Section 73 of the Indian Evidence Act, 1872.

7. In this connection, a reference deserves to be made to the binding ruling of the Supreme Court in the case of MURARILAL v. STATE OF M.P. reported in AIR 1980 Supreme Court at page 531. It has been held therein:

> "Further, by comparing the writing itself, the court would not assume to itself the role of an expert. Section 73 of the Evidence Act expressly enables the Court to compare disputed writings with admitted or proved writings to ascertain whether a writing is that of the person by whom it purports to have been written. Where there are expert opinions, they will aid the Court. Where there is none, the Court will have to seek guidance from some authoritative text book and the Court's own experience and knowledge. But discharge it must, its plain duty, with or without expert, with or without other evidence."

8. In view of the aforesaid binding ruling of the Supreme Court, I have compared the admitted handwritings of the respondent - accused with his disputed handwritings in the books of accounts and in the receipt at Exh.29 on the record of the case. I think the view on the evidence on record as taken by the learned trial Magistrate in that regard is a possible view and it cannot be interfered with.

9. So far as payment of the amount of Rs.34000/- to Natwarlal Nandlal is concerned, he has been examined as prosecution witness No.2 at Exh.21 on the record of the case. He has unequivocally stated that he received the amount of Rs.34000/- from the Society. The receipt in that regard is at Exh.24 on the record of the case. It does not bear any date. That amount is debited in the books of the Society on 30th June 1982. Prosecution witness No.2 at Exh.21 has however stated that he received the amount in 1989 and not on 30th June 1982. I have carefully examined the oral testimony of the witness at Exh.21 on the record of the case. He was stated to be working as Head Mechanic in the Mobile Workshop of the District Panchayat at Palanpur between 1978 and 1983. It appears that he was not an illiterate person. In all probability, he might have maintained his bank account.

Even if it is assumed that he received the amount of Rs.34000/- in cash from the Society in 1989, he would not have failed to deposit that amount in his bank account. He could have certainly produced some proof about the receipt of Rs.34000/- by him from the Society some time in 1989. No proof in that regard is available. In that view of the matter, though the receipt at Exh.24 is undated, on the strength of the entry in that regard made in the daily account book of the society on 30th June 1982, it is possible that the amount of Rs.34000/- was paid to prosecution witness at Exh.21 on 30th June 1982 and not in 1989 as claimed by him.

10. Besides, he was in the service of the District Panchayat at Palanpur from 1978 to 1983. Before leaving his job, ordinarily he would have tried to settle his accounts with the Society including repayment of his deposit amount. In that view of the matter, possibility of his receiving the amount of Rs.34000/- towards repayment of his deposit on 30th June 1982 cannot altogether be ruled out. The view taken by the learned trial Magistrate in that regard is again a possible view on the basis of the material on record and it need not be interfered with in this appeal against the judgment and order of acquittal.

11. So far as the loan amount of Rs.140000/- is concerned, the respondent - accused has obtained that amount by way of loan. The necessary Resolution in that regard was passed in the meeting of the Society held on 26th September 1980. It is true that Resolution No.11 in that regard is somewhat vague in its contents. No specific amount of loan is mentioned therein. No rate of interest to be charged from the respondent - accused is specified therein. The amount of instalment for repayment of the loan is also not specified therein. The Resolution however unequivocally sanctions some loan in favour of the respondent - accused against his application for loan in the sum of Rs.150000/- . Taking loan from the Society by the respondent - accused would not amount to misappropriation of its funds.

12. Learned Additional Public Prosecutor Shri Mehta for the appellant - State has highlighted the fact that the Society could not have given loan to anyone in excess of Rs.2000/- under its existing rules except with the permission of the District Registrar for amendment of the rules or the by-laws in that regard. If the Society has sanctioned loan in favour of the respondent - accused in excess of the permissible limit of Rs.2000/- without obtaining the permission from the District Registrar for

amendment of the rules or the by-laws in that regard, the fault lies with the Society and not with the respondent accused. It is true that the respondent - accused appears to have remained present in that meeting. It however does not become clear from the terms of Resolution No.11 passed thereat whether or not he was a party to that Resolution. Even if it is assumed that he was a party to that Resolution, it transpires from the minutes of the meeting at Exh.31 that it was passed by as many as 95 members. It transpires from the terms of the Resolution that it was passed unanimously. It would be difficult to assume that the respondent - accused could dominate all the members present in the meeting for the purpose of sanctioning loan in his favour against the rules, the regulations or the by-laws of the Society. It would have been desirable if he had not remained present when the Resolution in that regard was taken up for consideration if it is assumed that he was present. However, there is nothing on record to warrant such inference that he remained present when Resolution No.11 was passed in the meeting of the Society held on 26th September 1990.

13. In view of my aforesaid discussion, I am of the opinion that the learned trial Magistrate has rightly come to the conclusion that the prosecution could not prove its case against the respondent - accused beyond any reasonable doubt. The view taken by the learned trial Magistrate appears to be a possible view. It would not be desirable on my part to interfere with the possible view taken by the learned trial Magistrate in this appeal against his judgment and order of acquittal according to well settled principles of law.

14. In the result, this appeal fails. It is hereby dismissed. The bail bonds furnished by the respondent - accused are ordered to be cancelled.

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